

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 797 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and Sd/-

MR.JUSTICE R.P.DHOLAKIA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?
1 to 5- No

STATE OF GUJARAT

Versus

RANCHHODBHAI RATHOD

Appearance:

PUBLIC PROSECUTOR for Petitioner

MR JK PARMAR for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

Date of decision: 20/04/98

ORAL JUDGEMENT (Per: B.C.Patel, J.)

State has preferred this appeal against the order of acquittal recorded by learned Addl. City Sessions Judge, Court No.12, Ahmedabad, in Sessions Case No.179 of 1993 on 29-4-1997. Accused-respondents were tried for the

offences punishable under Sec.306, 498(A) read with 114 of Indian Penal Code on the allegation that accused used to torture the deceased Dhanalaxiben. On account of torture, she poured kerosene on herself and committed suicide. The charge was framed vide exh.5. Accused pleaded not guilty and contended that they are innocent.

.RS 2

#. After considering the evidence led by the prosecution, submissions made by the learned counsel and considering the statements of the accused, the trial Court acquitted the accused. Hence, the present appeal.

#. Learned Judge has found that near relatives of the deceased has not indicated anything which would show that there was torture. Even the letter, which is alleged to have been written by the deceased does not indicate that there was torture from the accused.

#. On going through the record and proceedings, it appears that, after thirteen years of marital life, wife committed suicide, which is clear from the dying declaration recorded by the Executive Magistrate. It is clearly stated by her that in the morning while preparing tea, her sari came in contact with the lighted stove, as a result of which, she sustained burn injuries. As she cried, original accused No.1, who was sleeping, came and he poured water on her and tried his level best to save her.

#. Learned Judge has considered this dying declaration and has held that there is no reason not to believe this dying declaration. Mr.Patel, learned Addl. Public Prosecutor could not point out any evidence by which it can be said that the dying declaration is not true.

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the

Court the decision of which is under appeal, will
ordinarily suffice."

#. In view of the above observation and looking to
the facts and circumstances of the case, appeal is
dismissed.

radhan/